IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P.No.301 of 2002

Reserved on: 10.4.**2007**

Date of decision:**13.4.2007**

Ravinder Kumar Petitioner

Versus

State of H.P.& others Respondents

The Hon'ble Mr. Justice ***V.K.Ahuja, J.***
The Hon'ble Mr. Justice ***Kuldip Singh, J.***

Whether approved for reporting[1]*?*

For the Appellant: **Mr.Rajesh Verma, vice counsel for the petitioner.**

For the respondent: **Mr. Ashutosh Burathoki, Addl. Advocate General for respondents No.1 and 2.**

Per V.K.Ahuja,J

The brief facts of the case are that father of the petitioner namely, Charanjit Lal was a regular peon in IPH Department who died while in service on 28.5.1989. He was survived by his widow Smt. Lajja Devi, four sons including the present petitioner and three daughters. Petitioner applied for appointment on the death of his father on compassionate grounds but no appointment was given to the petitioner who filed an Original Application before the State Administrative Tribunal. The Tribunal forwarded the application of the petitioner to be treated as representation. However, the

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Whether the reporters of Local Papers may be allowed to see the Judgment?

representation was rejected by respondents No.1 and 2 on 26.7.1993.

The petitioner's mother, namely, Smt. Lajja Devi wrote a letter to the Hon'ble the Chief Justice, High Court of Himachal Pradesh which was treated as Civil Writ Petition and was registered as CWP No.1047 of 1994 and the same was rejected for want of jurisdiction on 22.9.1997 with liberty to the petitioner to approach the appropriate forum.

The petitioner filed OA No.1274 of 1999 before the Tribunal. The Tribunal after hearing the parties dismissed the Original Application filed by the petitioner on 13.11.2001 vide impugned order.

Reply was filed by the respondents. We have heard the learned counsel for the parties and have gone through the record of the case.

A perusal of the impugned order shows that it was observed by the Tribunal that the elder brother of the applicant was residing separately and he was allegedly not supporting the applicant and his mother. A perusal of this order also shows that the respondents had intimated the applicant that the case of his mother can be considered on compassionate grounds if an application is filed in this regard. This finds corroboration from the order passed by the Financial Commissioner-cum-Secretary (Irrigation) on 26.7.1993 also that the request of employment assistance should only be considered only in respect of the widow. The learned Financial Commissioner had also observed that the request of the petitioner who is the 6th child of the deceased cannot be considered

since his elder brother is already in service. The Tribunal has considered the aspect that except the applicant, both sons of the deceased are in service and all the three sisters have been married out. The applicant is living with his mother who is getting pension of Rs.1500/- per month. It was observed by the Tribunal that after a lapse of 12 years it cannot be said that the family is still living in indigent circumstances. The object of compassionate appointment is to provide immediate help to mitigate the hardship due to the death of the bread winner. It also observed that the family had survived for nearly 12 years and the case of the applicant is not covered under the Rules to provide immediate financial assistance on the death of the bread winner of the family. The order passed by the Tribunal is based upon the facts of the case and is a reasonable order giving all the reasons with regard to declining the claim of the petitioner.

We may refer to the decisions of the Hon'ble Apex Court with regard to the appointments to be made on compassionate grounds. In the case ***Umesh Kumar Nagpal*** vs. ***State of Haryana and others*** (1994) 4 Supreme Court Cases 138, the observations made in paras 2 and 3, being relevant, and are being reproduced below::

> "The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family

> will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.
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> Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

In ***Punjab National Bank and others*** Vs ***Ashwini Kumar Taneja*** (2004) 7 Supreme Court Cases 265 the observations made in Para 4 are relevant and are reproduced below:

> "Appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

In the case ***State of Himachal Pradesh and others*** vs. ***Rajesh Kumar*** (2001) 9 Supreme Court cases 174, the widow was seeking appointment of respondent, the third son of her deceased husband on compassionate grounds, when her elder son was already in Government service but was not supporting her. It was observed by their Lordships that there being no provision in the Govt. policy framed on 18.1.1990 for grant of employment to the second or third member of the family when one or more members of the family are in service. Held, High Court was not justified in

directing the grant of employment to the respondent. It was observed that right to claim employment assistance under such circumstances, vests only in widow and that too only in accordance with the said Govt. policy.

The learned Financial Commissioner had also observed that only the widow had the right to apply for appointment on compassionate grounds but for the reasons best known to the petitioner or his mother, no such application was filed and the petitioner went on prosecuting his case before the Govt. and then before the Tribunal by filing OA and then filing the present writ petition. The petitioner's case was rejected on merits and the impugned order passed by the Tribunal does not suffer from any illegality calling for an interference by this Court and as such the findings are upheld. The petition filed by the petitioner is accordingly dismissed.

(V.K.Ahuja),J.

13th April, 2007 **(Kuldip Singh),J.**
(SDS)